

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

TIMOTHY E. BECKETT,

Defendant.

Case No. 3:02-cr-00007-JWS

ORDER DENYING MOTION

On November 20, 2006, Timothy E. Beckett, representing himself, filed a motion to "dismiss his indictment and conviction because the government did not present sufficient evidence at trial to prove a nexus between interstate commerce and conduct sufficient to support Hobbs Act Jurisdiction under any three prongs of the Lynch test."¹ Mr. Beckett was convicted on May 15 2003,² and filed a motion under 28 U.S.C. § 2255 in this Court one and one-half years later, on November 15,

¹ Docket No. 399 at 1.

² See Docket Nos. 303, 304.

2004.³ The Court ultimately dismissed his motion, on April 13, 2005, on the grounds that the petition was untimely and that he failed to comply with Court orders.⁴ Mr. Beckett appealed that dismissal, but a certificate of appealability was denied by this Court on June 6, 2005, and thereafter by the Ninth Circuit Court of Appeals.⁵

This Court has no jurisdiction to entertain yet another challenge from Mr. Beckett to his conviction and/or sentence.⁶ If Mr. Beckett wants to attempt to obtain permission to file an untimely, successive motion under § 2255, he must first seek permission from the Court of Appeals for the Ninth Circuit.⁷

³ See Docket No. 313.

⁴ See Docket Nos. 329, 330; see *also* Docket No. 314 at 3, Order to Show Cause ("Mr. Beckett must show that his motion for relief under 28 U.S.C. § 2255 has been filed in a timely manner, or that there is some basis for equitable tolling (suspending the limitations period); otherwise his motion must be denied as untimely"), to which he failed to respond, after being granted numerous requests for extension of time. See Docket Nos. 315, 316, 319, 320, 321, 323.

⁵ See Docket Nos. 334, 335, 352.

⁶ See Docket No. 342 (July 14, 2005, motion to amend § 2255 motion, while appeal was pending); Docket No. 345 (July 27, 2005, denial of motion to amend); Docket No. 354 (October 14, 2005, motion for reconsideration of resentencing); Docket No. 355 (November 16, 2005, denial of motion for reconsideration of resentencing, with reminder about successive petition rules).

⁷ See 28 U.S.C. §§ 2244(a), 2255; see *also, e.g., U.S. v. Francis*, 2006 WL 3328035 (W.D.La Nov 15, 2006) (post-conviction motion to dismiss indictment construed as successive motion under § 2255, dismissed for lack of subject-matter jurisdiction, and alternatively, as unauthorized and untimely).

IT IS HEREBY ORDERED:

1. Mr. Beckett's motion to dismiss the indictment, and for appointed counsel to litigate this claim, at docket number 399, is DENIED; and
2. If Mr. Beckett wishes to file a motion under 28 U.S.C. 2255, he must first receive permission from the Court of Appeals for the Ninth Circuit.⁸

DATED this 20th day of December, 2006, at Anchorage, Alaska.

/s/JOHN W. SEDWICK
United States District Judge

⁸ Section 2255 provides: A second or successive petition or motion must be certified as provided in section 2244 by a panel of the appropriate court of appeals to contain --

(1) newly discovered evidence that, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that no reasonable factfinder would have found the movant guilty of the offense; or

(2) a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable.

28 U.S.C. § 2244(a) states:

No circuit or district judge shall be required to entertain an application for a writ of habeas corpus to inquire into the detention of a person pursuant to a judgment of a court of the United States if it appears that the legality of such detention has been determined by a judge or court of the United States on a prior application for a writ of habeas corpus, except as provided in section 2255.